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ABSTRACT

Resource materials and learning activities to help secondary students in Kentucky learn about their state's court system are provided. The guide begins by providing a history of the Kentucky Court of Justice. Discussed are the qualification of judges, the Retirement and Removal Commission, the Judicial Nominating Commission, and juries. Background information is then provided on the District Court, the Circuit Court, the Court of Appeals, and the Supreme Court. The Circuit Court clerk's office is also discussed. Next, classroom activities are suggested. Activities involve students in simulations, role play, dramas, mock trials, and case studies. Ways in which teachers can use local and state resources are also described. A mock trial competition handbook that describes the rules of competition, trial procedures, how to prepare for the roles of witnesses and attorneys, and simplified rules of evidence and procedure is included. The manual concludes with a glossary. (RM)

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April 1985

Teachers' Manual
on
Kentucky's Unified Court of Justice

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Foreword

The revised teacher's manual on Kentucky's court system was developed and published jointly by the Department of Education and the Administrative Office of the Courts. The intent of this resource unit is to provide Kentucky teachers with a comprehensive overview of the Unified Court of Justice.

We believe that the more informed our children are the better citizens they will become, and it is our sincere hope that this material will be helpful to teachers in their efforts to acquaint students with Kentucky's judiciary.

Goals & Objectives

Goals

To provide a comprehensive manual for the teachers of Kentucky on the Unified Court of Justice.

To serve as an instructional aid to encourage the development of knowledgeable and responsible citizens in the Commonwealth.

Objectives

1. Describe Kentucky's courts and their jurisdiction.
2. Examine the qualifications and duties of judges for the various courts in the judicial system.
3. Examine the aspects of the court system which make it "unified."
4. Identify the judicial district, judicial circuit, and appellate district in which the students reside.
5. Describe the functions of the Circuit Court Clerks' office.
6. Compare the structure of the Unified Court of Justice with the former court system.

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A Look at the Kentucky Court of Justice

GREEN COUNTY COURTHOUSE

Oldest Courthouse West of the Alleghenys

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A LOOK AT THE KENTUCKY COURT OF JUSTICE

In 1975, Kentucky voters approved an amendment to the state constitution which restructured the judicial branch of government. In order to understand the reasons for this approval, it is necessary to examine the history of our court system.

History

Kentucky's fourth, and present, constitution was adopted in 1891. The court system at that time consisted of three levels:

1) Court of Appeals
2) Circuit Courts
3) Lower Courts--which included county court, quarterly court, police and magisterial courts

As our population increased over the years, the number of cases in the courts also increased. More judges were added to the trial level courts, (the circuit and the lower courts) but the constitution did not permit the addition of more appellate judges or appellate courts. Because of this shortage, the seven-member Court of Appeals became saturated with so many cases that a final decision could take as long as four years.

Eventually even trial level workload became unbalanced, with many judges working overtime in an attempt to keep dockets current, while judges in other districts did not have a full-time caseload. Workloads between districts were not balanced, and the mills of justice began to grind more slowly.

It became obvious that a system which was satisfactory for Kentucky in 1891 was inadequate in 1975. The court system had to deal with a population whose number had doubled and whose life-style had changed from mostly rural and agricultural to more urban and industrial. The automobile and related traffic problems and the field of government regulations were not contemplated in 1891.

And so, the citizens voted for a new court system, designed to meet current needs, while being flexible enough to handle future demands.

Court of Justice

The judicial power of the commonwealth is now held exclusively by the Court of Justice. It is a unified system for purposes of court operation and administration. It consists of the following: two appellate levels, the Supreme Court, the Court of Appeals, and two trial levels, the Circuit Court and the District Court.

Qualification of Judges

There are several areas where the same rules apply to all courts. All judges and justices must be lawyers, an important feature of the new court system. While serving, no judge or justice may engage in the practice of law, run for elective office (other than a judicial office), or hold any office in a political party or organization. In addition, each one must be a citizen of the United States and have been a resident of the state and of the district from which the person is elected, for two years preceding his/her taking office. A district judge is required to have been a licensed attorney for at least two years. All other judges must have been licensed for at least eight years. All judges and justices are elected on a non-partisan basis.

In order to provide flexibility within the system, the constitution now provides for an expansion or reduction in the number of Court of Appeals judges. The General Assembly determines the number upon certification of necessity by the Supreme Court. The number and arrangement of judicial circuits and districts, as well as the number of circuit and district judges may be changed in the same manner. By this method, orderly change is possible without further amendment of the constitution.

By rule of the Supreme Court all judges are subject to a code of judicial conduct. Violators are subject to discipline by the Retirement and Removal Commission.

Retirement and Removal Commission

The Retirement and Removal Commission is composed of one judge of the Court of Appeals, one circuit judge, and one district judge (chosen by their separate courts), one member of the bar association appointed by the bar association, and two persons appointed by the Governor. The commission has the power to retire for disability, suspend without pay, or remove with good cause, any judge or justice.

A notice and hearing are required, and the actions of the commission are subject to review by the Supreme Court. In the past, the only avenue for removal of a judge was by impeachment. As a consequence, the judicial system suffered when any judge became incapacitated because he/she could not be removed or replaced.

Judicial Nominating Commission

The Judicial Nominating Commission is required to supply nominees to the Governor from which he/she chooses one person to fill a vacancy created by illness, retirement, resignation, death or other reasons, in a judicial office. There is one commission for the Supreme Court and the Court of Appeals, a separate commission for each judicial circuit, and a separate one for each judicial district if the District Court boundaries are different from those of the Circuit Court.

The members of the commission, which include judges, members of the bar association, and Governor's appointees, select three names for the open position and submit them to the Governor. The Governor must select one from the list within 60 days. If he/she fails to act, the Chief Justice of the Supreme Court makes the appointment from the same list.

Juries

The Constitution of the United States and the Constitution of Kentucky guarantee any person on trial the right to a trial by jury. Jury service is one way that a citizen can help protect the rights of his community, the defendant or plaintiff, and the judicial system.

To serve as a juror, a person must be a U.S. citizen and resident of the county where the trial is being held. The juror must speak and understand the English language, must be mentally and physically capable of rendering effective jury service, and must not have been previously convicted of a felony, nor be presently under indictment.

In Kentucky, jury pooling is used as a means of making the most efficient use of jurors, and a person called for jury service may serve either in Circuit Court, District Court, or on the grand jury. Any resident of the county eighteen years of age or older may be called for jury duty, with certain exceptions, for a period normally not in excess of 30 days. If a person is unable to serve on a jury at that time, the judge may in his discretion postpone the date of jury service.

In the Circuit Court a jury normally consists of 12 persons, however, a lesser number (not less than 6) may be agreed upon. In the District Court the jury consists of 6 persons. In a criminal case a unanimous verdict is required for a conviction or for an acquittal. A 3/4ths verdict is required in civil cases in the Circuit Court and a 5/6ths verdict for civil cases in the District Court. In criminal cases the jury not only determines guilt or innocence but sets the penalty. In civil cases they also assess the amount of damages which must be paid.

In addition to the trial jury (known as the petit jury) there is a grand jury. The purpose of the grand jury is to evaluate whether there is enough evidence against an accused criminal to warrant his protection or to review the facts of a given situation to determine if a criminal offense has been committed and who the perpetrator or perpetrators were. In the event enough evidence is found, an indictment is issued by the grand jury.

DISTRICT COURT

The District Court is a court of limited jurisdiction. Juvenile matters, city and county ordinances, misdemeanors, traffic offenses, probate of wills, felony preliminaries, cases involving the hospitalization of the mentally ill and the disabled, and civil cases in which the amount in question is $2500. or less are heard in District Court.

The small claims division handles informally, matters with a value of $1,000. or less. Under this system, claims are filed on a form provided by the court for a filing fee of $15.50. The services of a lawyer are not necessary, so each party handles his/her own claim.

District Court judges are elected from judicial districts, which are geographic divisions of the state. If a district is highly populated, and has a heavy caseload, that district may have several judges in only one county. In rural, or less populated areas, a district may encompass more than one county but have only one judge who travels from county to county to hear cases within that district. A district judge must have a law degree and have been a licensed attorney for at least two years. They are elected to a four-year term. There are 123 district judges in 56 judicial districts.

In counties where no district judge resides, a trial commissioner is appointed. The trial commissioner serves at the pleasure of the district judge but his/her duties are limited. A trial commissioner must reside in that county and be a licensed attorney, if one is available.

CIRCUIT COURT

The Circuit Court is the court of general jurisdiction and handles all civil matters involving more than $2500. It has jurisdiction of capital offenses and felonies, divorce, adoption, termination of parental rights, land title problems and contested probate of will cases.

The Circuit Court hears appeals from the District Court and from administrative agencies. In hearing appeals from the District Court the Circuit Court reviews the record of the case, the arguments of the attorneys and makes its decision. It does not hold a new trial.

Circuit Court judges are elected from judicial circuits. There are 91 circuit judges in 56 judicial circuits. The judges are elected for a term of eight years. In order to qualify for election he/she must have been licensed to practice law for eight years and have lived in that circuit for two years prior to being elected. If a judicial circuit has more than one judge, the judges elect one as Chief Judge for two years. He is the administrator of that particular Circuit Court.

Judicial Circuits and Districts

First Judicial Circuit
Ballard, Carlisle, Fulton & Hickman

Second Judicial Circuit
McCraken

Third Judicial Circuit
Christian

Fourth Judicial Circuit
Hopkins

Fifth Judicial Circuit
Crittenden, Union & Webster

Sixth Judicial Circuit
Daviess

Seventh Judicial Circuit
Logan & Todd

Eighth Judicial Circuit
Warren

Ninth Judicial Circuit
Hardin

Tenth Judicial Circuit
Hart, Larue & Nelson

Eleventh Judicial Circuit
Green, Marion, Taylor & Washington

Twelfth Judicial Circuit
Henry, Oldham & Trimble

Thirteenth Judicial Circuit
Carrard, Jessamine & Lincoln

Fourteenth Judicial Circuit
Bourbon, Scott & Woodford

Fifteenth Judicial Circuit
Carroll, Grant & Owen

Sixteenth Judicial Circuit
Kenton

Seventeenth Judicial Circuit
Campbell

Eighteenth Judicial Circuit
Harrison, Nicholas, Pendleton & Robertson

Nineteenth Judicial Circuit
Bracken, Fleming & Mason

Twentieth Judicial Circuit
Greenup & Lewis

Twenty-first Judicial Circuit
Bath, Menifee, Montgomery & Rowan

Twenty-second Judicial Circuit
Fayette

Twenty-third Judicial Circuit
Estill, Lee & Owsley

Twenty-fourth Judicial Circuit
Lawrence, Johnson & Martin

Judicial Circuits and Districts, continued

Twenty-fifth Judicial Circuit
Clark & Madison

Twenty-sixth Judicial Circuit
Harlan

Twenty-seventh Judicial Circuit
Knox & Laurel

Twenty-eighth Judicial Circuit
Pulaski & Rockcastle

Twenty-ninth Judicial Circuit
Adair, Casey, Cumberland & Monroe

Thirtieth Judicial Circuit
Jefferson

Thirty-first Judicial Circuit
Floyd

Thirty-second Judicial Circuit
Boyd

Thirty-third Judicial Circuit
Perry

Thirty-fourth Judicial circuit
Whitley & McCreary

Thirty-fifth Judicial Circuit
Pike

Thirty-sixth Judicial circuit
Magoffin & Knott

Thirty-seventh Judicial Circuit
Carter, Elliott & Morgan

Thirty-eighth Judicial Circuit
Butler, Edmonson, Ohio & Hancock

Thirty-ninth Judicial Circuit
Breathitt, Wolfe & Powell

Fortieth Judicial Circuit
Clinton, Russell & Wayne

Forty-first Judicial Circuit
Clay, Jackson & Leslie

Forty-second Judicial Circuit
Calloway & Marshall

Forty-third Judicial Circuit
Barren & Metcalfe

Forty-fourth Judicial Circuit
Bell

Forty-fifth Judicial Circuit
Muhlenberg & McLean

Forty-sixth Judicial Circuit
Breckinridge, Grayson & Meade

Forty-seventh Judicial Circuit
Letcher

Forty-eighth Judicial circuit
Franklin

Judicial Circuits and Districts, continued

Forty-ninth Judicial Circuit
Allen & Simpson

Fiftieth Judicial Circuit
Boyle & Mercer

Fifty-first Judicial Circuit
Henderson

Fifty-second Judicial Circuit
Graves

Fifty-third Judicial Circuit
Shelby, Anderson & Spencer

Fifty-fourth Judicial Circuit
Boone & Gallatin

Fifty-fifth Judicial Circuit
Bullitt

Fifty-sixth Judicial Circuit
Caldwell, Livingston, Lyon & Trigg

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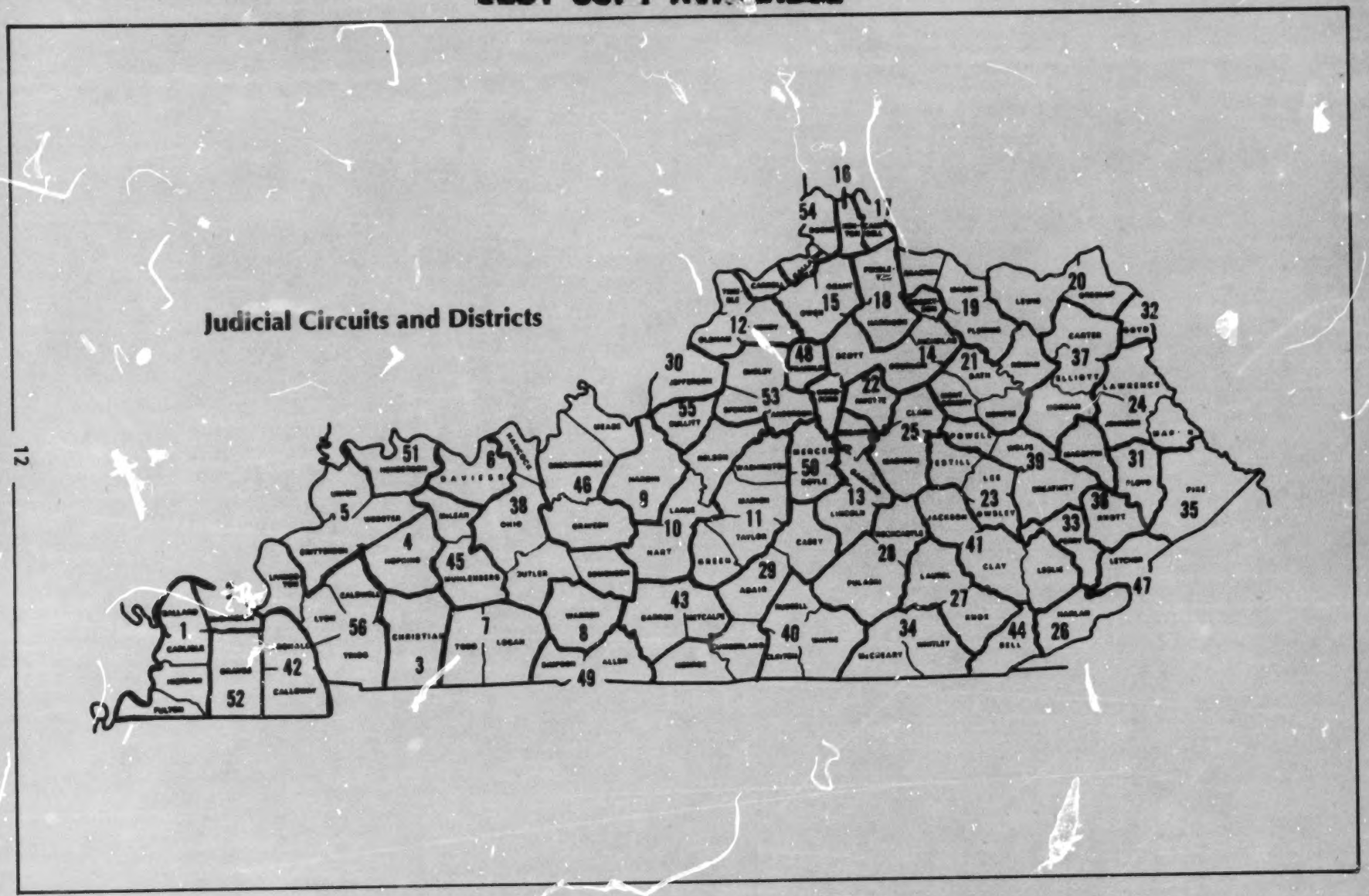

Court of Appeals

COURT OF APPEALS

The Court of Appeals has appellate jurisdiction. Most cases come to it from a lower court, either Circuit or District. It is divided into panels of not less than three judges. A panel may decide a case by the concurring vote of a majority of its judges. The panels do not sit permanently in one site, but move about the Commonwealth to hear appeals. Additionally, the members of each panel are rotated periodically to assure new judges in each region of the state on a regular basis.

If a case is tried in a lower court and the losing persons involved are not satisfied with the outcome, they may ask for a higher court to review the correctness of the decision of the lower trial court. The Court of Appeals does not hold trials, but conducts oral arguments during which attorneys present legal issues to be decided. Cases involving divorce and criminal case acquittals may not be appealed.

The Court of Appeals consists of fourteen judges, two being elected from each appellate district for a term of eight years. In order to qualify for selection he/she must have been licensed to practice law for eight years and have lived in the appellate district for two years.

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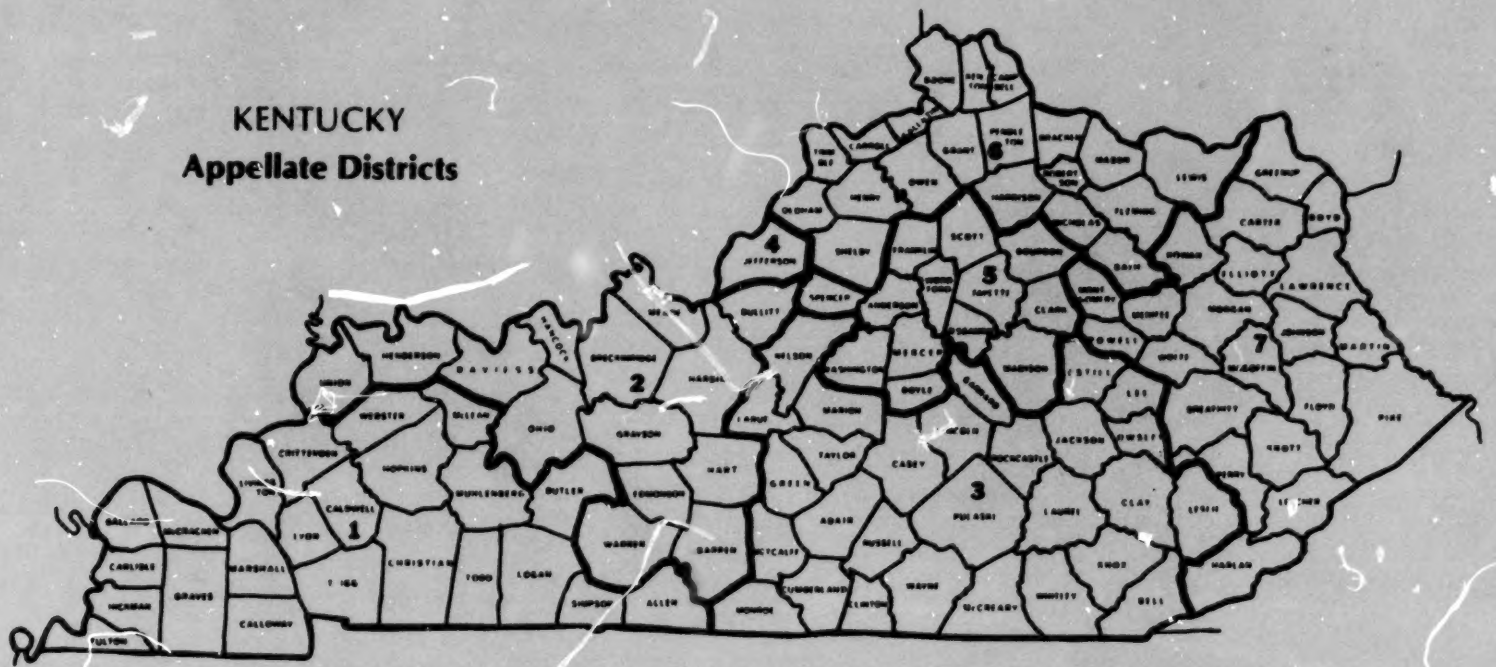
KENTUCKY
Appellate Districts



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Supreme Court

KENTUCKY'S CAPITOL

THE SUPREME COURT ROOM OF KENTUCKY is located on the second floor of the Capitol Building in Frankfort and is visited by thousands of tourists each year. The walls are paneled in Honduras mahogany, and the moulding has an egg and dart effect. The ceiling is Dutch metal leaf and lacquered to represent "old bronze." The beautiful chandelier and other light fixtures are brushed brass with a satin finish; they were imported from England. The courtroom was first used in 1910 when the Capitol was opened.

SUPREME COURT

The Supreme Court is the court of last resort and the final interpreter of state law. It hears appeals of decisions from the lower state courts, on a discretionary basis. Cases which involve the death penalty, life imprisonment or imprisonment for 20 years or more go directly from the Circuit Court level where the cases are tried, to the Supreme Court for review. A case which comes before the Supreme Court for review is not retried. There are no witnesses, juries or testimony. The case is presented to the Supreme Court by attorneys with written briefs and oral arguments addressing the legal issues which the Court must decide. Seven justices review cases as a panel and issue written decisions, or "opinions," on the cases. After a decision by the Kentucky Supreme Court, a case can be appealed only to the United States Supreme Court in Washington, D.C.

The Supreme Court establishes rules of practice and procedure for the entire Court of Justice, for the conduct of attorneys and judges, and for procedures to be followed by all state court officials. The Supreme Court sits permanently at the State Capital in Frankfort.

Seven justices are elected from the seven appellate districts for a term of eight years. In order to qualify for election to the Supreme Court, he/she must have been licensed to practice law for eight-years and have lived in the appellate district for two years.

A chief justice of the Supreme Court is chosen for a four-year term by his/her colleagues. He/she is the administrative head of the Court of Justice and is responsible for its management and operation.

The Circuit Court Clerk's Office

CIRCUIT COURT CLERKS

Circuit Court Clerks are elected officials of the court and are responsible for the custody, control, and safe storage of court records for both Circuit and District Court. Among the duties of the clerks and their deputy clerks are the receipt of lawsuits and papers for the courts, being present during trials, receiving fines, selling drivers' and boat licenses, scheduling juries, handling bond money, and operating and tape recording equipment which records District Court proceedings.

There is one elected Circuit Court Clerk for each of Kentucky's 120 counties. They serve for a term of six years.

SUPREME COURT AND COURT OF APPEALS CLERK

The Clerk of the Supreme Court and Court of Appeals is an appointed office. He/She is responsible for maintaining accurate and efficient records of both courts. In addition the clerk is the keeper of the courts' official seals, issues certificates of good standing and licenses to attorneys, provides applications to and collects fees from persons desiring to take the Kentucky Bar Examination, and administers the Constitutional oath of office to newly admitted attorneys and to other state officials.

Suggested Classroom Activities

SUGGESTED CLASSROOM ACTIVITIES

Using Your Local and State Resources

Make extensive use of community resource persons to teach about law and court procedure. Examples: judges (Circuit, District, appellate), clerks of court, lawyers, prosecutors, pretrial officers, sheriff, police, probation officers, ex-offenders.

A successful classroom hour can best use community resources by preplanning.

1. Give the resource person enough lead time.

2. Prepare the speaker as to the size, age level and background of your class.

3. Let the speaker know what you are currently studying and how the speaker fits in. Tell him or her what materials you are using.

4. Determine the appropriate method of preparation.

   Lecture
   Panel discussion
   Mini-lecture with discussion
   Mock trial/role play/simulation
   Debate
   Other activity you would like speaker to try

5. Prepare the class. Have materials read and discussed; students should prepare questions in advance. In role-play, have students discuss problems.

6. If video taping equipment is available, tape presentations by resource people. These presentations can be used for review or for classes the speaker cannot visit in person.

Using Simulation and Role Playing

ISLAND SIMULATION

Island Simulation is designed to stimulate student thinking about the need for laws whenever any group of people live together at any place or in any given time. It will provide insights into the decision-making processes which determine what kinds of laws are necessary and who will be responsible for enforcing them.

Procedures

1. Divide the class into groups of six to eight students. Have the groups arrange themselves in a circle so that each person can see everyone else.
2. Give each student a copy of ISLAND SIMULATION. Instruct them to read it and then decide what they are going to do.
3. Do not appoint group leaders--allow them to emerge. Also do not appoint the group recorder. It will be necessary for you to tell the students that the group's decisions must be recorded and that one person should be responsible for that duty, but allow the group to make their own decision.
4. After about 5 to 8 minutes, give each group at least one copy of "THINGS TO CONSIDER WHEN PLAYING 'ISLAND SIMULATION'."
5. Allow play to continue for another 20 minutes and then ask that person who became the leader of each group to tell what his or her group decided to do.
6. The teacher should then discuss with the class his or her observations of each of the groups.

Teacher Observations

Once the groups begin their discussions, the teacher should move around the room and keep notes as to the following types of developments. (NOTE: You may want to write down this list of questions ahead of time for each group of students so that you can quickly fill in the answers as you observe the groups.)

1. Who began to assume dominance over the group in terms of leading the discussion or making the most suggestions?

2. Who made the most reasonable suggestions? What was the group reaction to these?

3. What was the first decision made by the entire group? How was it made (domination by one or a few; apathy by the majority; vote by the group, etc.)?

4. Who became the group recorder? How did that person get the responsibility?

5. What was the first rule (law) the group established?

6. Did the group establish any other rules (laws)? What were they?

ISLAND SIMULATION* (Scenario)

You are all on an island that is three miles long and one mile wide. The island is located in a large ocean. This island is not on any map. No plane or ship passes it. A warm water current flows past the island. The highest elevation is a three hundred foot hill at the north end of the island. A cave is in the hill. In the cave is a box. The box is in a puddle of water. Inside the box is 500 pounds of wheat. The wheat is not wet. The box is waterproof. There is a fresh water spring on the island. One-third of the island is covered with plants. The rest of the island supports no vegetation.

The transportation which brought you to the island is wrecked and sunk in deep water. If you were on a ship, the ship is sunk three miles away. Nobody knows where you are. The last time you touched land was 1000 miles away. Nobody there knew where you were going. If you traveled by air, all contact with others was lost. Your radio went out when you were 1000 miles away from your departure point. You have not been on anyone's radar for 800 miles. In either case, no message for help was sent.

Through a miracle, no one was hurt. You are as well as you are right now.

WHAT ARE YOU GOING TO DO?????

Things to Consider When Playing "Island Simulation"

1. Do we know that there is no one else here?
2. Do we know if we need protection here?
3. What do we have?
4. What do we need?
5. Who will be our leaders?
6. What should we do to get started?
7. What should we do in the first 24 hours?

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SCHOOL WITHOUT RULES -- by Dorothy Rigby and Jane Siengenthaler

The following play was written and developed as an introductory lesson for a law-related unit at the junior high school level. It may be used in a variety of ways; ideally, if your school has the proper equipment, it is recommended that you produce this play for video-tape so that it may be used in other classes in your school system or elsewhere in the community. Using student actors, simple props and sets, and even utilizing student directors and camera-persons, the activity becomes an exciting, multi-faceted learning experience.

If an interdisciplinary approach is desired, students in an English class or drama club could be involved in script writing and production. As an alternative to actually producing a scripted play, you may want to simply describe the situation to the class, assign roles to selected students, and have them role-play the scenario as they think it would develop.

Objectives

Following this activity, students should be able to:

1. Understand and demonstrate the need for rules and laws, both within and between groups;
2. Explain the need for authority;
3. Differentiate between power and authority;
4. List some ways laws help people; and
5. Demonstrate an awareness of how acceptable behavior may differ within various groups.

Debriefing

At the conclusion of this activity, students may wish to discuss the following questions:

1. In No Rule High School, which had no rules and law, how was authority determined?
2. How did the lack of rules affect the students' relations with their peers?
3. What specific individual rights were affected by the lack of rules?
4. What behavior patterns are acceptable at No Rule High School but are unacceptable at your school?
5. Under what conditions could a community exist without laws or rules?
6. Identify a rule or law which exists in each of the following communities and give a possible reason for its existence: (a) School, (b) Home, (c) Township or Borough, (d) State, and (e) Nation.

7. Can you think of a rule or law which you would like to change? If so, how would you go about changing the rule or law?

Extended Activities

1. The principal could be invited to discuss with your class why certain rules are in effect.

2. Students could list laws designed to protect individual rights and those designed to regulate their behavior.

3. Students could be asked to construct a code of laws for their school.

4. Students could compare and contrast the acceptable behavior of elementary school, junior high, and senior high school.

SCHOOL WITHOUT RULES* (Scenario)

SCENE 1: The Bungler family living room. Mrs. Bungler is seated in a lounge chair. Mr. B. is reclining on the sofa. Daughter Kathy enters.

Kathy: Hi, I'm home.

Mrs. B.: How was school today, Kathy?

Kathy: Awful, I hate that place!

Mrs. B.: What now? Every day you have a new complaint.

Kathy: I'm just sick of it. They have all these dumb rules, you'd think we were little kids or something. They don't trust us to know how to act at all. I mean like hall passes, now that really is dumb. Don't they think high school kids know how to act?

Mr. B. Now wait a minute, Kathy, schools have to have some rules.

Kathy: Oh, no they don't! You know, I asked again and again to be allowed to go to No Rule High School in Libertytown. They don't have any rules in the whole school. In fact, they don't have any rules in the whole town and they get along fine.

Mr. B.: Hold on--how do you know they "get along fine?"

Kathy: Well, I know some kids from my school went there and they told me about it. Ah, Dad, c'mon, be open-minded like you say you are. Our high school treats us like a bunch of babies, and they make you take all these courses, you hardly get any choices at all. At No Rule High School you can take anything you want.

Mrs. B.: Oh, that's great, and what about college? If you take any old thing you want, what do you think will happen when you try to get into college?

Kathy: Mom, I don't even know if I want to go to college. Anyway, what I can do is find out the requirements for college and then choose the courses I'll need.

Mrs. B. (sits up) But then aren't you making yourself go by a rule?

Kathy: That's the point, Dad, I'll be setting up my own rules, not somebody else telling me what to do.

Mrs. B.: How do you know they offer the courses you'll need? After all, if there are no rules, they don't have to teach anything.

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Kathy: I know they do because I wrote a letter to the principal, Ms. Vice, and she sent me some information. Just a minute. I'll show you. (She exits.)

Mr. B.: Do you think we ought to give her a chance at this new school?

Mrs. B.: Oh, I don't know, I hate to have her going away from home. She's only 17, and besides, I'll miss her. Do you think she's really that unhappy with the high school here in town?

Kathy: (Returns with folder and shows it to her parents.) Look, here it is, all about classes and the dorms and everything. Look, Dad, I figured out, it wouldn't cost that much more to send me to that school than it does to keep me here.

Mrs. B.: But, darling, we'll miss you. Libertytown is over a hundred miles from here.

Kathy: It's only two hours, Mom. I'll be able to come home on weekends sometimes and of course for vacations. And I'll write you often and you can call me up. Oh, please, please, can't I try it? Just for one semester?

Mrs. B.: What about your friends, Kathy? You won't see them anymore,

Kathy: Just think of all we'll have to talk about when I come home. Maybe after I'm there a while some of my friends will come to Libertytown, too.

Mrs. B.: You're really serious, aren't you?

Kathy: Yes, I am, Mom. Don't you think I'm grown up enough to take care of myself?

Mr. B.: Kathy, you know that's not it. It's just that your Mother and I, we, well...

Kathy: Mom, Dad, please, just let me try it. If it doesn't work out I promise I'll come home without an argument. I just have to get out of that prison!.

(Mr. and Mrs. B. exchange glances, Mrs. B. nods.)

SCENE 2: Kathy's room at school. She is sitting at a desk writing. (VOICE OVER)

Kathy's voice: Dear Mom and Dad, my first two weeks at school have really been interesting. My teachers all have different methods of grading. For example, Dr. Scale, my science teacher...

(Fade to Science classroom scene. Focus on Dr. Scale)

Dr. Scale: Now, class, I would like you to observe my grading system. According to my theory, the intelligent and/or informed student will have more to say on a test paper or a lab assignment. Therefore, his paper will actually, in fact, weigh more than the less well-read students'. Of course, you all see the impartiality of this. It doesn't matter who you are or what you say, as long as you get a lot of ink on the paper. Of course, some paper might be heavier to begin with, but so what. Naturally, I curve the grades so that seven percent of the heaviest papers will get an "A" while the lightest papers will fail. Any questions?

(Focus on Mrs. Worldly, Social Studies teacher. Her class is a bit out of control.)

Mrs. W.: Students! Students! If you would like to listen for just a moment, I'll tell you how your work in social studies is graded. Since social studies and English are so closely related, we have a similar grading system. However, unlike your English teacher, Ms. Lit, who throws papers upstairs, I throw papers down the stairs. If your paper lands on the lowest step, you get an A, next lowest, B, and so on. Of course, you all see the inherent fairness of this system. Anyone can get an A, whether they know anything or not. Any questions?

Student: (unseen) Yes, I have a question, do you give grades?

(Re-focus on Ms. Worldly. She has a puzzled expression. Scene then fades to another classroom: Math class. Focus on Mr. Fraction, Math teacher)

Mr. F.: I believe there should be an equal number of all grades in math class. Of course, they should be distributed anonymously, so if you disagree, tough, Kid, because this is my class and I run it the way I want to and no one can do anything about it. When I give a test I start with the first paper and give it a grade, say a "C". Then I go through the pile of papers giving a sequence of letter grades--C, D, F, A, B, C, D, F,--so every fifth paper gets the same grade. This system of grading is completely unbiased and, therefore, completely fair.

(Blur out. Back to Kathy writing: VOICE OVER)

Kathy's voice: Well, so much for my classes, now let me tell you about the rest of the school...

(Focus on Kathy talking to friend in student lounge)

Kathy: I don't know what to do about my roommate. She keeps taking my things. First she stole a pair of earrings, then Mom sent me some cookies and she ate them all--as if she needed them, she's only three times bigger than I am. Yesterday she took my last pen and this morning my favorite bracelet was gone. What would you do? The

housemother won't do a thing because she's afraid of the big ox, too!

Friend: Well, I don't know that there's anything you can do. I mean after all, the chick is three times your size and there's no rule that says she has to respect your property. Even the Libertytown police won't do anything, since there are no laws here. All they do is ride around on their motorcycles.

Kathy: Well, I guess you're right, but it sure does make me mad. I guess I'll have to buy some locks for everything. Listen, what extra-curricular activities are there here?

Friend: Well, let's see, there's Stamp Club, Nature Club, Student Council...

Kathy: Oh, how do you get into Student Council?

Friend: I don't really know. They have elections, sometimes, but they don't really announce them. And they don't check on the voting so you have to get some friends to sit around and stuff ballot boxes. Then, they don't count the votes anyway, they just sort of stack them in piles...Oh, look, here comes the Student Council President now--ask him how to get in.

(A large boy enters, trailed by several smaller characters)

Kathy: Excuse me, are you the Student Council President?

Harry: Yeah, Baby, what about it?

Kathy: Well, I'd like to run for Student Council--what should I do?

Harry: First of all, ya' go out with me, and then I'll make the necessary arrangements--if I like ya'.

Kathy: Well, I don't...what I mean is, what about elections?

Harry: Elections?! Ha! I didn't win no 'lection. This punk turkey was goin' 'round sayin' he's the president. Well, me and some o' the guys took care a' him, so now I'm the president, right, boys?

Boys: Yeah, Harry, right.

Harry: (Grabs one of the boys and lifts him by the front of his shirt) You better say that, Kid, and don't forget it! Anyway, baby, I'll pick ya' up at 8:00.

Kathy: Uh, I changed my mind, I don't think I want to be on Student Council after all. Maybe I'll join the Self-Defense Club instead.

(Back to Kathy writing: VOICE OVER)

Kathy's voice: This week I had a few problems. I went to talk to the principal about my...

(Focus on Kathy and Ms. Vice, the Principal, in the Principal's office)

Kathy: Ms. Vice, I need help with a few problems I've been having this week. First of all, look at my hand. This guy slammed it in the locker because he was mad at me. What can I do about it?

Ms. Vice: Well, you could get it taken care of by a doctor. But since we have no rules, there's nothing else I can do about it.

Kathy: Well, what about this? When I came out of class the other day this girl on my floor was slashing by bicycle tires. When she saw me, she ran and I couldn't catch her. I think she should have to buy me a new set of tires, don't you?

Ms. Vice: Yes, I see your point, but really, Kathy, there's nothing I can do. You could steal her tires, or slash them to get back at her, unless, of course, you're afraid of her.

Kathy: I'm not afraid, I just don't think that's the way to settle it. I guess I'll think of something. There's one more thing I'd like to talk to you about, as if it will do any good. Someone has been putting up posters around the school saying I'm a drug pusher.

Ms. Vice: Are you?

Kathy: NO!

Ms. Vice: You could take them down. Or you could put up signs saying you're not a drug pusher, or you can put up signs accusing them of being pushers. Or, you can scare them into a public apology.

Kathy: Ok great. I don't think any of those ideas will really help. When someone tells lies about you, they should have to answer for it.

Ms. Vice: I don't understand Kathy, I though you wanted to come to No Rule High so you could be free from rules and laws. Everyone is here for the same reason, so they won't have to live by any rules. Don't you like this freedom?

Kathy: (Disgusted) Oh, yeah, it's great, just great. Thanks a lot, Ms. Vice.

(Phone rings as Kathy leaves Ms. Vice's office. Ms. Vice answers it.)

Ms. Vice: $20 on White Lightning in the 3rd? O.K., Shorty.

(Focus on Kathy, writing: VOICE OVER)

Kathy's voice: This morning I went to the library to get some books for a social studies report, but the books that weren't stolen had either been burned or marked up by people who didn't like them. So, I can't do my homework. But then I guess it doesn't matter anyway, except to me.

(Fade to black)

IT'S YOUR WITNESS

The purpose of this activity is to help students understand the role of the lawyer in a trial and the way he uses questions to prove his case. One of the most difficult elements of a trial for students to understand is the questioning of witnesses.

1. Select one witness, two prosecutors, and two defense lawyers.

2. Give each a copy of the activity, "It's Your Witness."

3. Give the attorneys a copy of "Instructions to Attorneys." Allow them 10 or 15 minutes to write their questions.

4. Write the four elements of the crime on the board. (These four elements can be found in the "Statement of the Case"). Tell the rest of the class they are the jury. Tell them that the evidence elicited by the prosecutor must prove "beyond a reasonable doubt" that Mr. A killed Mr. B and that they will have to deliberate and vote after the evidence is given.

5. Proceed with the questioning.

6. Have the jury deliberate and reach a majority decision.

7. Discuss the purpose and use of questions by the lawyers in a trial.

8. Discuss the term "adversary" and tell students this is called the "adversary system."

9. Evaluate it as a means of insuring justice.

IT'S YOUR WITNESS* (Scenario)

Mr. B, a construction worker, was killed in a diner during his lunch hour. Mr. A is accused of the killing. Mr. C was a witness. Mr. A was arrested, indicted by the grand jury, and charged. The indictment is as follows:

> On March 17, 1972, Mr. A did unlawfully, willingly, and with "malice aforethought" kill Mr. B by stabbing him with a knife.

The District Attorney, in order to convince Mr. A of murder with malice must prove beyond a reasonable doubt:

1. That there was a killing;
2. That Mr. A did the killing;
3. That Mr. A killed Mr. B with a knife, and
4. That Mr. A did the killing with "malice aforethought." This means that he did so without any legal reason and with an evil intent.

The Medical Examiner has already testified that he performed an autopsy on Mr. B who died of a stab wound which could have been caused by a knife.

Witness C can testify to the following facts:

1. He heard loud voices that caused him to look up at Mr. A and Mr. B.
2. He heard Mr. B say, "I know you have that knife, Joe" in a loud voice.
3. He saw Mr. A back away and hold up his hands saying, "No, I don't have any knife."
4. Next thing he saw was Mr. B staggering and falling back toward him. He saw blood running out of his stomach from a big gash.
5. After Mr. B fell at his feet, Mr. C looked up and saw a flash of light in Mr. A's hand.
6. Mr. B started toward Mr. A, then turned and ran off. He didn't know what Mr. A did after that.
7. He did not see a knife around anywhere.

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Instruction to Attorneys

Prosecutors

You may ask Mr. C ten questions to try to prove the four elements of the crime. You may not "lead" the witness. This means you may not ask questions which suggest an answer, for example, "You did see a knife, didn't you?"

Defense Attorneys

Your job is to see that your client gets a fair trial. The state must prove its case "beyond a reasonable doubt." You should try to create a reasonable doubt in the minds of the jurors. You may ask ten questions in order to raise this doubt.

NO VEHICLES IN THE PARK* (A Role-Playing Simulation)

This short simulation is designed to place every participant in the judge's position. The statute reads, "No vehicles in the park." Individual cases are presented and judges are asked to rule upon each one by determining whether the statute has been violated. Judges may issue individual verdicts or they may work in teams of 3 with one verdict per team. If all 3 judges cannot agree, the majority opinion rules. A time limit of 5-8 minutes should be allowed for a team discussion. Tell students that the verdict can range from "not guilty" to a fine on a scale of from five to fifty dollars.

Procedures

Announce that each participant is a judge. Identify them as "Judge Smith, Judge Jones," etc., to emphasize their roles.

1st Case - an automobile

2nd Case - a garbage truck

3rd Case - a bicycle

5th Case - a police patrol car

6th Case - a tank (Mounted on a pedestal as a monument)

As each case is determined, several points of discussion should be raised.

1. What is a vehicle?
2. What is the purpose of this statute? (safety, quiet, etc.)
3. What is the purpose of a park and how does this statute protect that purpose?
4. If you were not judges, would you want to change the statute?

The case data can be copied from the next page for distribution to "judges."

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NO VEHICLES IN THE PARK (Scenario's)

First Case

An automobile drives through the park. It is stopped by a police officer. After checking license and registration, the officer asks the driver why she is driving though the park and if she knows about the statute prohibiting vehicles. The driver says she knew about the statute but was in a hurry to cross town and went through the park as a shortcut.

Second Case

A garbage truck is stopped by a police officer for driving through the park. The driver states that he knows about the law and usually he did not drive into the park to pick up refuse. However, this day there was an unusual amount of garbage and he couldn't carry it all by hand.

Third Case

An ambulance is stopped by a police officer for driving through the park. The ambulance did not have its siren operating or its light flashing. The driver explains that an accident had occurred and the ambulance was called to pick up an old person. The person is believed to have had a heart attack.

Fourth Case

A group of bicycle riders for the "Fresh Air Is Fun" Club are stopped by a police officer while cycling through the park. The cyclists say they are on a day-long bicycle outing from another town and were unfamiliar with the statute. Several members of the group argue with the officer stating that the law is stupid because the paths are wide enough for riders and walkers.

Fifth Case

This case involves an eight-year-old girl who is riding her bicycle through the part. An officer stops her and tells her she can't ride her bicycle in the park. The little girl continues to ride it, telling the officer it's a silly rule and she doesn't care.

Sixth Case

A group of citizens in the community decides to place an old World War II Army tank on a pedestal in the middle of the park. The tank will be transported on a flatbed truck. Before doing so, a representative of the group calls the Police Department to ask if this is a violation of the statute about vehicles.

FRANCINE, KERPLUNK, AND THE GOLDEN NUGGET

The following fanciful fable can be used to help eighth graders address the issue of search and seizure. These suggestions should help to focus the issue.

Discussion Questions

1. Did the Chief have the right to search Kerplunk's pad? Why or why not?

2. What is a search warrant? Do you think the Chief should have had a warrant?

3. Remember, Kerplunk gulped and the Chief interpreted this to be consent to search. Did Kerplunk give his permission?

4. The golden nugget was forcibly removed from Kerplunk. Does it make any difference that it was removed by accident?

A MOCK TRIAL

A simple mock trial can be developed on the issue of search and seizure. You will have to assume that frogs have the same constitutional rights that we have. (The 4th Amendment gives us the right to privacy and protects us against unlawful searches and seizures.)

Procedure

1. Select four students to play the main characters: Francine, Kerplunk, Chief Bull Frog, and Fat Flopper.

2. Select three students to play the judge, the prosecuting attorney, and the defendant's attorney.

3. Select four more students to be witnesses: two for the prosecution, two for the defense.

FRANCINE, KERPLUNK, AND THE GOLDEN NUGGETT* (Scenario)

Once upon a time there were two frogs named Francine and Kerplunk. They lived in a pond in the woods. Francine was a very pretty frog. She had big beautiful eyes. She had long frog-legs. All the frogs in the pond thought she was pretty. Kerplunk knew she was the prettiest frog he had ever seen. But Kerplunk was bashful. He never knew what to say to Francine.

The pond they lived in was dotted with lily pads. Many of the teenage frogs liked to play leapfrog from one pad to another. On Thursday evenings, they would gather on the grassy bank to practice singing. The Frog-Horn Chorus could be heard for miles around.

Francine and Kerplunk both sang in the chorus. Kerplunk always tried to sing well so that Francine would notice him. But Francine never paid any attention.

Francine spent most of her time collecting pebbles. It was her hobby. She would swim over to the sparkley stream and search along the bottom for pretty stones. She liked smooth pebbles and colored ones. Mostly she searched for the bright ones that sparkled in the sunlight. Those were really hard to find. Each day she would find another lovely stone. Her collection grew and grew.

Kerplunk would watch Francine looking for stones. He would try to get her attention by showing off. Kersplish! Kersplash! He would jump from lily pad to lily pad. He jumped high and never missed a pad. But Francine ignored him. When he got up his nerve, Kerplunk would ask Francine to play. Francine always refused. She was more interested in her pretty pebbles.

Finally, one day, Kerplunk became so angry that he warned Francine, "If you don't play with me, you'll be sorry!" Francine ignored him. She couldn't think how Kerplunk could make her sorry. She continued to look for pebbles.

One day a wonderful think happened while Francine was looking for pebbles; she found the best pebble she had ever seen! It was shiny. It sparkled. It was a golden nugget! She was so excited. She called to Kerplunk to look at it. Kerplunk did not see anything special about a stupid stone! Looking for pebbles was a waste of time. He asked Francine to play leapfrog again.

She didn't even bother to answer him. She hopped over to a friend's house to show off her golden nugget. Kerplunk was hurt and mad again.

That evening Kerplunk decided to get even with Francine. It was Thursday. Everyone would be singing on the bank. Francine would be there, too.

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It was quiet except for the sound of the chorus. Kerplunk knew he would not be seen. He skipped over to Francine's pad.

He was looking for her collection. He finally found Francine's hiding place. There were lots and lots of pebbles. Right in the middle of the pile was what Kerplunk wanted. The golden nugget! Now she'd be sorry. Now maybe she would pay attention to him. Why, he could even pretend he found it for her if she was too unhappy. He did not want her to feel too badly. He took the nugget and swam home, lickety-split.

When Francine returned from song practice, the first thing she did was to go to her hiding place. "Oh, no!" she croaked. It was gone! She began to cry. She looked and looked, but the nugget was not there, not anywhere. She cried all night long.

The next morning Francine still could not find the nugget. She knew that she had put it in the middle of her pile of pebbles. Someone must have taken it. But who? Who would do such a mean thing? Everyone knew it was her favorite pebble.

All of the frogs in Frogdom had been singing on the bank last night when the nugget must have been taken. That is, all of the frogs except Kerplunk! And Kerplunk was mad at her because she wouldn't play his silly games! Besides, he had warned her that she would be sorry.

Francine decided that it wouldn't do any good to ask Kerplunk herself. She had to go see Chief Bull Frog and tell him her story.

Francine hopped over to the Police Pad. The chief was always ready to listen. Francine explained what had happened. She told the Chief that she was sure Kerplunk had taken the nugget. The Chief said the best thing to do was to go and ask Kerplunk. Francine didn't want to go alone. The Chief said he would go with her.

Chief Bull Frog and Francine went off to Kerplunk's lily pad. When they got there, the Chief asked Kerplunk if he had taken the nugget. Kerplunk didn't answer. He was afraid. Besides he could not open his mouth to speak because the golden nugget was hidden under his long, fly-catching tongue. The Chief said if Kerplunk didn't mind, he would just take a look around the lily pad. Kerplunk gulped. His gulp looked like a nod to the Chief. The Chief decided he would need some help, so he called his assistant--Fat Flopper.

Now Fat Flopper was not very good at leapfrogging. He started over to Kerplunk's house and missed three lily pads on the way. As he bounced into Kerplunk's pad, he landed right on top of Kerplunk with a terrible "whump." You can guess what happened! Out popped the golden nugget! The Chief saw it--Francine saw it. Kerplunk looked really scared now.

WHAT WOULD HAPPEN? WHAT WOULD THE CHIEF DO? WHAT WOULD FRANCINE DO?

USING THE CASE METHOD APPROACH TO STUDY LANDMARK DECISIONS INVOLVING JUVENILES

The case study allows students to wrestle with relevant issues, to make and defend decisions, and to consider the consequences of their decisions. In approaching a problem through case study, the student will gain practice in all levels of thinking from simple recall to evaluation.

Procedure

Give students a copy of the facts, only, of the case. Use questions and role playing to identify the issue(s), develop arguments, and reach a decision. Next, provide students with the court decision. Use questions and discussion to compare and contrast their decision with that of the court and to consider the implications of the court's decision.

SAMPLE CASE STUDY: TINKER V. DES MOINES SCHOOL DISTRICT

Facts

1. Who were John and Mary Beth Tinker?
2. Who was Christopher Eckhardt?
3. What was the accusation against the defendants?

Issues

1. Is any legal issue raised by this case? Explain.
2. What does the Free Speech Clause of the First Amendment mean in this case?
3. Does the Free Speech Clause apply to juveniles?

Arguments

1. What are the arguments favoring Tinker's position?
2. What are the arguments favoring the school district's position?

Decision

1. Should the Supreme Court review this case? Why?
2. How would you decide?

Evaluation

1. What was the court's decision
2. What reason did the court give for its decision?
3. Do you agree with the decision? Why?
4. What effect do you think this decision will have upon the rights of the individual?

CASE I: TINKER V. DES MOINES SCHOOL DISTRICT (Scenario)

John F. Tinker, 15 years old, and Christopher Eckhardt, 16 years old, were high school students in Des Moines, Iowa. Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group decided to protest the war in Vietnam by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. John, Mary, Christopher and their parents had previously engaged in similar activities, and they decided to participate in the protest.

The principals of the Des Moines schools learned of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it. If a student refused, he would be suspended until he returned without the armband. The students were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school. They did not return to school until after the planned period of wearing armbands had expired -- that is, until after New Year's Day.

Questions for Tinker Case

1. Does the Free Speech Clause of the First Amendment protect students to the same extent as other citizens? If not, what special limitations apply in the schools? Why are such limitations imposed?

2. Do students at all levels of education, i.e. elementary, secondary and college, have the same rights under the First Amendment? If not, what are the reasons for these differences? Is this fair? Is this equitable?

3. The wearing of armbands has been referred to as "symbolic speech." What does this mean? What is the difference between "symbolic speech" and "pure speech"? Should each be protected equally under the First Amendment?

4. What relevance is the principal's rule which prohibited the wearing of armbands? Does it matter that this rule was made in anticipation of the students' action? What if the school passed a regulation forbidding students to wear political campaign buttons?

The Decision

The United States Supreme Court ruled in favor of the students. The Court said that their conduct had been orderly and had not violated the rights of others. Justice Fortas, in writing the majority opinion, said, "Neither teachers nor students shed their constitutional rights to the freedom of speech...at the schoolhouse gate." The Court said there was no disturbance or any reason to believe there would be a disturbance. The wearing of black armbands, therefore, was a lawful form of expression.

CASE II: In re: GAULT (Scenario)

A neighbor of Gerald Gault and Ronald Lewis, Mrs. Cook, complained to the police about a telephone call made to her in which the caller or callers made lewd or indecent remarks. The boys were taken into custody by the Sheriff of Gila County, Arizona. Gerald was then on probation as a result of having been in the company of another boy who had stolen a wallet from a lady's purse. At the time Gerald was picked up for the telephone calls, his mother and father were both at work. No steps were taken to advise them their son had, in effect, been arrested and taken to the Children's Detention Home.

A petition was filed with the juvenile court on the hearing day, June 8, 1964. A copy was not given to Mr. and Mrs. Gault. It said that "said minor is under the age of eighteen years, and is in the need of protection of this Honorable Court; (and that) said minor is a delinquent minor." It asked for a hearing and an order regarding "the care and custody of said minor." Officer Flagg signed a sworn statement in support of the petition.

On June 9, Gerald, his mother, his older brother, and probation Officers Flagg and Henderson appeared before the juvenile judge in chambers. Mrs. Cook, the complainant was not there. In addition, no one was sworn in at this hearing, no transcript or recording was made and no memorandum or record of the substance of the proceedings was prepared. Gerald was questioned as to what he said. His mother recalled that Gerald said he only dialed Mrs. Cook's number and handed the telephone to his friend, Ronald. Officer Flagg recalled that Gerald admitted making the lewd remarks. At the conclusion of the hearing, the judge said he would "think about it" and Gerald was taken back to the Detention Home.

On Monday, June 15, Gerald, his father and mother, Ronald Lewis and his Father, and Officers Flagg and Henderson came before Judge McGhee for further hearings. Witnesses couldn't agree on Gerald's testimony at a previous hearing. Again, the complainant, Mrs. Cook, was not present. Mrs. Gault asked that Mrs. Cook be present but the juvenile judge rejected her request. The judge did not speak to Mrs. Cook or communicate with her at any time. Probation Officer Flagg had talked to her once--over the telephone the day after the phone calls were said to have taken place.

At this June 15 hearing a "referral report" made by the probation officers was filed with the court although not disclosed to Gerald or his parents. This listed the charge as "Lewd Phone Calls." At the conclusion of the hearing, the judge committed Gerald as a juvenile delinquent to the State Industrial School "for a period of his minority (that is until 21), unless sooner discharged by due process of law."

Questions for In Re: Gault Case

1. Why is there a separate set of laws and legal processes for juveniles? Is this a good idea? Should juveniles have the same rights as adults? Should juveniles have the same responsibilities? Should they be subject to the same punishment?

2. Do you think it important that Gerald's parents be notified of all action taken in the case? What if Gerald did not want his parents involved? Should Gerald have the right to be represented by an attorney at the hearings? What difference would this make?

3. Do you think that Mrs. Cook, the complainant, should be present at the hearing? What if she were too embarrassed to testify? Should Gerald be forced to be a witness at this proceeding?

4. Would it make any difference if all that could happen to Gerald was a serious reprimand? Do you think that the sentence he received was fair?

The Decision

The Supreme Court ruled in favor of Gerald Gault. The Court said that when a juvenile proceeding can take away a young person's freedom by committing him to an institution, he is entitled to the same safeguards guaranteed an adult by the Due Process Clause of the Fourteenth Amendment. These rights include: notice of the charges made against the accused, representation by a lawyer, confrontation and cross-examination of witnesses in court, right against self-incrimination, and the right to remain silent.

A JOYRIDE TO CHARLEYTOWN (A Play)

This play is not a mock trial in the true sense. It is really a lesson designed to take advantage of the natural interest of youth in their own problems. It attempts to accomplish two broad objectives for eighth graders. The first objective touches upon some causes of the problems of juveniles with the law, how they arise through innocence, neighborhood influences, and inactivity on the part of youth. The second objective deals with the consequences of irresponsible acts of youth. Related skills or learnings in this area looks to the procedures in juvenile trials and the rights and safeguards guaranteed to juveniles under our legal system. Here, we have treated, by inference in the play rather than be preaching at the youth, such legal essentials to the fair treatment of juvenile offenders as:

1. Specific notice and a statement of specific charges.
2. The opportunity to confront and cross-examine witnesses.
3. The privilege against self-incrimination.
4. The right to counsel.

In Part two the general procedure for a play has been given. It is recommended that you follow this procedure.

Specific Procedure

Characters: 18

1. Narrator
2. Judge
3. Bailiff
4. Clerk
5. The complainant, Mr. Long
6. Mack Ronson
7. Tyrone Smith
8. Freddie Duke
9. Ronald Braddock
10. Percy Jones
11. James Corbin
12. Mr. or Mrs. Smith
13. Mr. or Mrs. Duke
14. Mr. or Mrs. Corbin
15. Mr. or Mrs. Ronson
16. Mr. or Mrs. Braddock
17. Mr. or Mrs. Jones
18. Two policemen

Staging: Two Acts

The use of props should be kept to a minimum. There are eighteen characters in the play. It is recommended that you double cast the parts so that all pupils will have an opportunity to participate. The play runs about one class period.

ACT I, SCENE 1 - Front steps of an apartment house

The narrator, who appears only in Act I, Scenes 1 and 2, should stand on stage right, so that he can be seen and heard by the class.

Apartment steps - Six chairs placed in a row in front of the room will be sufficient for the steps of the apartment house.

ACT I, SCENE 2 - The interior of a car

The same six chairs, arranged three in front and three behind, can simulate the interior of an automobile.

ACT II, SCENE 1 - The Courtroom

Judge's Bench - You may use the teacher's desk and chair as the props. Place them directly in front of the classroom and as near the chalkboard as possible to allow space for characters to stand before the judge. You may also place a small table to the right of the Judge's bench for the complainant and another to the left for the accused to sit.

Preparation

Each member of the cast should be supplied with a copy of the script. There is no need to commit the lines to memory so allow the students to read their parts. It is of major concern that the students get a "feel" of the legal issues involved in the play. Thus, it is desired that the students attempt to identify with the roles and the situation they portray while keeping within the limits of the written script.

Reinforcement Activity

Ten questions are provided for discussion as a follow-up exercise. The discussion that follows the play should be designed to promote a solution to problems of group concern. The questions and suggested answers which follow are for the teacher's use. The questions without answers which appear at the end of the script are for student's use.

A JOYRIDE TO CHARLEYTOWN

Questions

1. Why did Mac receive a more serious punishment from the Judge than the other boys?

   (He had taken an automobile before. The courts deal more severely with a second offense. Because of his previous experience with the law he should have known better.)

2. What does the law say about going for a ride in a car which is stolen?

   (All of the boys technically shared the responsibility for the theft, but the court recognized varying degrees of guilt.)

3. Should all the boys have been given the same punishment?

   (The court recognized degrees of guilt and dealt with the boys in what the Judge felt was a fair manner. Thus, not all received the same punishment. In this case some of the boys were the victims of circumstances.)

4. Do you agree with the Judge's decision? Why?

   (Answers will differ depending upon the backgrounds of the various students. This is a good question for discussion. If the students disagree, ask them how they would handle the case. What would they want done if their car were stolen?)

5. How would your parents react if you were caught riding in a stolen car?

   (Answers may differ in the degree of the parental response, but no parent would be pleased by the situation.)

6. Why did Percy have to be a little more careful in everything he did than the others?

   (He was on probation for a previous offense and his probation could have been revoked. He could have been sent back to St. Charles if the Judge had so wished.)

7. Do you think Percy could get into serious trouble even though he was completely innocent?

   (Quite possibly he could, the fact that he was on probation makes him an easy victim of circumstances.)

8. Should parents be held responsible for the actions of their children?

   (Answers will differ. A good question for discussion.)

9. Should parents have to pay for damages caused by their children?

(Answers will differ. You may wish to discuss with the class the effect this policy might have on parents.)

10. In what ways can children be taught respect for law and the rights of others?

(Different answers are possible. If children understand the law and how it protects the individual it may also help them to understand why it is necessary to respect the rights of others.)

A JOYRIDE TO CHARLEYTOWN* - (A Play)

ACT I, SCENE 1 - Porch

Narrator: It is a hot sweltering summer evening. Two boys are sitting on the steps of an apartment house.

Mack: Gee, it sure is hot. I wish we could go some place where it's cool.

Tyrone: Yeah, man. There ain't no place to go. Can't go to the lake, it's too far to walk. Can't go to the swimming pool, it's closed. Ain't nothing to do but sit around and sweat.

Mack: Say, man. Look at that cool cat riding around in that big boat. That sure is s-o-m-e car. If we had something like that, we could go anyplace. Riding around we'd sure keep cool. And, man, would we make it cool with the kids!

Tyrone: Say, that's an idea! Lot of folks leave their big cars around town with the keys in them and the doors unlocked. We'll just borrow one for a little while and take a joy ride.

Narrator: The two boys stroll up and down the streets in the parking lot area surveying the cars.

Mack: Wow! Look at that beauty! The top is down, and the man left his keys in the ignition. He'll probably never even miss it. We'll be back in half an hour.

Tyrone: Play it cool. Get in and we'll take it for a ride.

ACT I, SCENE 2 - Automobile

Narrator: Six chairs are arranged (three in front and three in back) to simulate the interior of an automobile. The boys get in the car. Mack starts the motor and they drive off.

Mack: Man, this is living. I'll drive by Walker's pool hall. We'll pick up some of the guys, find some girls and live it up.

Narrator: As they approach the pool hall, some of the boys standing on the corner observe Mack and Tyrone pull up in the Chrysler convertible.

Freddie: Hey, man! Where did you get that beautiful buggy?

*Reprinted with permission by the Law in American Society Foundation.

Tyrone & Mack: We just picked it up. Come on in. We'll go for a spin.

Narrator: So Freddie and James get in. They call to Ronald.

James: Hey, Ron. Come on and go for a ride with us.

Ronald: Not me, man. That's a hot car. I don't want any trouble.

Freddie: Aw, come on. Don't be chicken. We're just going for a little ride. We'll bring it back.

Ronald: Okay. But take it easy. Don't speed and bring the cops down on us.

Narrator: They cruise around the neighborhood, passing acquaintances, calling to them and attracting attention. They see someone coming home carrying heavy packages.

Tyrone: Hey, Percy. Come on. We'll give you a lift so you don't have to carry that heavy bunch of packages all the way home.

Percy: I don't know, man. Whose car is that?

Mack: Don't worry. It's my old man's car.

Percy: Okay. You know, I don't want to get in trouble. I'm on probation and I don't want to go back to Charleytown.

Ronald: Let's take this thing on the road and open it up.

Percy: Well, I've got to get home fellows. My old man is waiting for his groceries.

Mack: Oh, your old man can wait. We won't be gone long.

Tyrone: Yeah, forget it.

Narrator: They pull away from the curb with a screeching start and speed down the street.

Freddie: Come on, Mack, step on the gas. Let's see how fast this buggy will go. (Mack accelerates.)

Ronald: Hey, Mack. Take it easy--there's lots of cops cruising around this neighborhood.

Narrator: Mack continues to accelerate. He doesn't slow down at intersections and screeches around turns. A cruising squad car sees the speeding car and begins to chase it.

Tyrone: Hey, the Man is after us--step on the gas, Mack. Let's leave them in the dust.

Percy: Oh, no. You better stop--I told you guys, I don't want to go back to Charleytown. Besides, you might kill someone. There are a lot of kids on the street.

Ronald: Yeah, Mack. Slow down. If I get in trouble, my old lady will skin me.

Mack: Oh--you guys are all chicken--just hand on--I can lose them.

Narrator: Mack screeches around a corner--partially loses control and sideswipes a parked car. He runs up on a curb on the opposite. No one is injured. A squad car pulls up.

Police: All right, boys, line up! You boys will have to come with us to the station.

Narrator: The officer takes the boys to the station where they talk to a juvenile officer. He contacts each of the boys' parents. They are required to come to the station where they are informed of the charges against their children. The boys are kept in custody. The owner of the car is notified. A juvenile officer investigates the case, visits the boys' homes, gets their school progress reports.

All this information is turned over to a Judge for evaluation. The Judge sets a court date for a hearing with all concerned parties present. This is called an adjudication hearing.

The following scene takes place in the courtroom before a Judge. This scene provides the final disposition of the case.

ACT II, SCENE 1 - A Courtroom

Narrator: Judge Bosworth enters. The six boys, their parents and the owner of the car (the plaintiff) all stand.

Bailiff: Hear ye, hear ye, the court of the Honorable Judge Bosworth is now in session. All those having business here, draw near.

This case involves six boys on a stolen car charge. Your Honor.

Judge: Are all the litigants present?

Bailiff: Tyrone Smith, Freddie Duke, James Corbin, Percy Salinski, Ronald Braddock, Mack Schwartz. (Each boy answers "here" when his name is called.)

Is the complainant present?

Mr. Long: I am.

Judge: Then we will proceed with the facts of the case. Generally we have separate hearings, but the parties agreed to the hearing of this as one action.

You six boys are here on a very serious matter. Charges have been filed against you by Mr. Long, charging that you stole his car and damaged it. I also understand that other charges are pending for reckless driving, improper turns, speeding, and property damage.

These are the charges against you. You have certain rights. You have the right to counsel (a lawyer). If you cannot afford a lawyer to represent you, the court will appoint a public defender, who will advise you on testimony and your right to remain silent and avoid incriminating yourselves. He can cross examine witnesses in your defense. Do you each want me to appoint a public defender for you?

Boys: No, Judge. We want to have the case tried here and now by you.

Judge: Do the parents agree to the waiver of counsel by your sons?

Parents: Yes, we do, your Honor.

Judge: Do you understand then that if you are found guilty of the charges, I will pass sentence on each of you?

Boys: Yes, we do, your Honor.

Judge: (to clerk) May I see the station adjustment sheet referring to these boys? (The Judge ponders over the sheets and turns to Mr. Long.)

Mr. Long, would you please tell the court what happened on the night of August 3, 1967.

Mr. Long: Well, your Honor, at about 8:30 p.m. I parked my car on the east side of Schiller Street, just off Wells. My wife and I were going to Old Town for dinner and sightseeing. About two hours later, we returned to the place where the car had been parked and found it was gone. We called the police and made a report. The next morning I received a call from the police saying that my car had been recovered. I was told that six boys were joy riding in it and that it had been damaged. I was heartsick when I saw the car. The police told me that these were the boys who were in my car at the time of the arrest.

Judge: You boys heard the testimony. Mack, you were driving the car. Could you tell us how you came to be driving this car? Was it your decision to take it? Did you agree with somebody else, or were you talked into it?

Mack: I really wasn't stealing the car, Judge. It was a hot night, and we just wanted to cool off a bit. We were going to bring it back.

Judge: You're old enough to know the difference between right and wrong. What if the car had been yours and some boys decided to take a ride in it. How would you feel?

Mack: I guess I wouldn't like it.

Judge: What have you got to say for yourself, Tyrone?

Tyrone: Well, like Mack says, we didn't have anything to do, so we went for a ride. Guess that's all, Judge.

Judge: Freddie Duke, James Corbin? What have you got to say?

James: I didn't take the car, Judge. I just went for a ride in it.

Judge: Did you know it wasn't Mack's car? That it was stolen?

James: Yeah. I guess so.

Judge: According to the laws of our state, in accepting that ride you became an accomplice to the crime, and you have also broken the law.

James: Gee! I didn't know that, Judge. I didn't take it.

Judge: Ronald Braddock, what about you? Does the same apply to you?

Ronald: Well, your Honor, I guess I knew it was a hot car, but if I didn't go the guys would call me chicken, and I wouldn't be a part of the gang any more.

Judge: Well, Ronald, I hope you realize that by preferring not to be called chicken you leave yourself open to more serious trouble and punishment. Next time, if I were you, I'd rather be called chicken.

Percy, I see by this report before me that you are on probation. Do you realize that you violated probation. What do you have to say for yourself?

Percy: I realize, Judge, that I am on probation and I don't want any more trouble. I kind of thought these cats stole the car and I didn't want to get in, but they kind of coaxed me. I even asked them if it was "hot," but they said "no" and said it was Mack's father's car. So, I believed them and got in. Honest, Judge, I didn't want any trouble.

Judge: Is what Percy says true?

Boys: Yes, Judge. That's right. We didn't tell him because we knew that he wouldn't get in the car if we did.

Judge: Mrs. Schwartz, is there anything you'd like to tell us? Has your boy been in trouble before?

Mrs. Schwartz: Well, your Honor, I try my best to teach him the right thing to do. I have many small children at home and I can't go chasing Mack all over town. He just doesn't listen to me anymore. He hangs around with those bad boys. He even sasses me sometimes. I just can't do anything with him.

Judge: I see. Mrs. Duke, is there anything You'd like to say?

Mrs. Duke: I just don't understand children today. They have no respect. They're always fussing and fighting. They don't listen to the police, parents or teachers. I don't know what the world is coming to.

Judge: Mrs. Corbin?

Mrs. Corbin: I just don't understand it, Judge. Mr. Corbin and I work so hard. We try to keep him dressed nicely, to give him spending money, to teach him the right things. I just don't understand.

Judge: Mrs. Salinski, do you have anything to say?

Mrs. Salinski: Your Honor, I know Percy's been in trouble before and that he spent six months at St. Charles, but he's really trying hard not to go back. He's been such a good boy. He sees his probation officer once a week. The Reverend from our church has been working with him. And, Percy has been helping him out at the church. Percy is a leader at day camp at the community house. He has a job with the Neighborhood Youth Corps. He gets good grades at school and doesn't cause any trouble there. It's the fault of those other boys. He wouldn't have got in the car if he'd know it was stolen. Please don't send him back. He's really a good boy!

Judge: After hearing the testimony of Mr. Long, the boys involved, and their parents, I will state that technically all the boys share in the responsibility of the auto theft. But this court is fair. It understands that there are varying degrees of guilt. We do not approve of any one taking the property of another person, even if, as stated by the defendants, their purpose was not to steal it, but merely to take it for a ride. We all have a responsibility to respect the property of others, just as we have the right to have our property protected by the law. In dealing with these cases, the court considers many things; past behavior, school attendance and achievement, home background, sincerity of the boys, and so forth.

Mack Schwartz, this is not the first time you have committed an offense. You have taken an auto before. Apparently you have not benefited from your first

experience with the court, therefore, I think it is necessary to send you to the Illinois Youth Commission at St. Charles, Illinois, for a period of six months.

Tyrone Smith, your past record indicates that you have not been involved in any prior serious misdemeanors; therefore, I place you on one year's probation. But let me warn you that if I should see you before this court again, you will be allowed no leniency. You will be sent to the Illinois Youth Commission.

Percy Salinski, you were on probation, and this court could have you picked up by your probation officer and taken back to St. Charles to finish out the length of your probation. However, your testimony and that of the other boys tend to support your story that you not only had no knowledge but went further and even questioned your friends about the car to avoid trouble. You are discharged with the reminder to be very careful when dealing with your friends. I am glad to see your behavior is improving.

Freddie Duke, James Corbin, and Ronald Braddock, this court is placing you under probation. You parents are responsible for your good behavior. If you refuse to abide by their rules, or if you get into any other serious trouble with the law, you will be given the same punishment as other violators of probation. In addition, to impress your responsibility for the rights of others on you, you must pay Mr. Long $50.00 each for the damage to his car. This money will not come from your parents, but from earnings from any type of work you may undertake. Maybe in the future when you own a car, you will remember this.

Mr. Long, unfortunately this court can do no more than admonish you for your carelessness. In a sense, you have contributed to the theft of your auto by not locking your car and leaving the keys in the ignition. You just extended an invitation to trouble. Next case.

Questions for Discussion

1. Why did Mack receive a more serious punishment than the other boys?

2. What does the law say about going for a ride in a stolen car?

3. Should all the boys have been given the same punishment? Why?

4. Do you agree with the Judge's decision? Why?

5. How would your parents react if you were caught riding in a stolen car?

6. Why did Percy have to be a little more careful in everything he did, more so than the others?

7. Do you think that Percy could get into serious trouble even though he was completely innocent?

8. Should parents be held responsible for the actions of their children?

9. Should they have to pay for damage done by their children?

10. In what ways can children be taught respect for the law and the rights of others?

GO FISH

This activity may be used as a review of legal terms and their definitions.

This packet contains one deck of 52 cards. Glue each page of 4 cards to a piece of 8½" x 11" medium-weight, colored posted board. Laminate, if possible.

One deck of cards will be needed for each group of 2-5 players. Copies of the "Card sheet" should be made from the masters before any gluing or cutting is done.

Procedures for Play

Any player deals one card face up to each player to determine who deals. The low card deals (2-lowest, Ace-highest). The cards are shuffled, then dealt. Cards are dealt face down one at a time to the left. (With 2 or 3 players, each player receives 7 cards; with 4 or 5 players, each receives 5 cards.) The remainder becomes the "Fish Pond."

The player to the immediate left of the dealer begins play by saying "(Joe), give me your (kings)." (The person who calls for a card must hold at least one card of that rank.) Assuming that Joe has a king, he would ask the caller for the definition of the term on that king card. If the caller gets the definition correct, "Joe" must give him the card. If the term is incorrectly defined, the caller does not get the card and play continues with the next caller.

Should Joe not have a king, Joe's response would be "Go Fish." Assuming that the caller draws a king, his pair then is removed from his hand and turned face down on the desk (table). He continues until he fails to make a match. Should he not draw what he called for, the player to the left continues the game.

The player who has the most pairs when the fish pond is dry (cards are all drawn and matched) is the winner.

Mock Trial Competition Handbook

Rules of Competition
Trial Procedures
Tips for Preparing Roles of Witnesses and Attorneys
Simplified Rules of Evidence and Procedure
Judge's Score Sheet

Prepared

for

The Kentucky High School Mock Trial Competition

Endorsed and Supported

by

Kentucky Department of Education
Kentucky Bar Association
Kentucky Administrative Office of the Courts

RULES OF COMPETITION

I. TEAM PRESENTATIONS

1. All teams should consist of seven members--four attorneys and three witnesses.

2. Teams may make gender changes in the witnesses. However, the opposing team must be notified a minimum of three days in advance of the trial date.

3. Each team may have two additional members to act as alternates. One alternate must be designated as the alternate for the attorneys and one alternate must be designated as the alternate for the witnesses. These alternates may be used in any fashion the coaches choose, keeping in mind the aforementioned stipulation.

4. Each team must be able to argue both sides of the case. No team substitutes are permitted with the exception outlined in Rule #3 of the two alternate team members.

5. Teams will be notified by February 1, 1985, as to which side they will have to present in the first round of competition. If a team advances to the second round, a flip of the coin will determine what side they will present. Teams will be informed of which side of the case they will be presenting within three days of the completion of the first round of competition.

6. The statement of facts and additional stipulations may not be disputed at trial.

7. Certain witnesses may be designated as experts, and their expert qualifications for the purpose for which they are testifying may not be challenged or impeached by the opposing side.

8. Each witness is bound by the facts in the witnesses' depositions.

9. If a witness testifies in contradiction of a fact in his or her deposition, the opposition must show this on cross-examination through correct use of the deposition for impeachment. This procedure is spelled out in the Rules of Evidence.

10. If a witness invents an answer which is likely to affect the outcome of the trial, the opposition may object and request a bench conference. The judges, with the assistance of the coaches if necessary, will decide whether to allow the testimony. The judges may consider such inventions of fact in making the decision concerning the best team presentation.

11. Fact witnesses are not permitted to use notes in testifying during the trial. Expert witnesses may use notes during their testimony.

12. Each of the four attorneys on a team must participate in each trial and must engage in one direct examination and one cross-examination. However, the attorneys who present the

opening or closing statement need only engage in once such examination.

13. The attorney presenting the opening argument, may not also make the closing argument.

14. Attorneys may use notes in presenting their cases.

15. Students may read other cases, materials, articles, etc., in preparation for the mock trial. However, they may only cite the materials given, and they may only introduce into evidence those documents given in the official mock trial packet.

16. The trial proceedings are governed by the Mock Trial Simplified Rules of Evidence. Other more complex rules may not be raised at the trial.

17. During the actual trial, coaches and all other observers may not talk to, signal, or otherwise communicate with or coach their teams.

18. Teams are expected to be present in the courtroom 15 minutes before the starting time of the trial.

19. The starting time of any trial will not be delayed for longer than ten minutes. Incomplete teams will have to begin without their other members or alternates.

20. Each team is responsible for providing half of the jury. Juries of six or twelve may be used. The size of the jury will be reached by agreement of the competing schools at least three days in advance of the trial.

21. All participants are expected to display proper courtroom decorum and good sportsmanlike conduct. Appropriate dress is required.

22. The decision of the judges with regard to rule challenges and all other decisions are final.

II. JUDGING

1. The jury will render the verdict at the end of the trial. The jury's verdict will determine the winner only if the judge's scoring results in a tie. Otherwise the jury will not determine which team advances to the next round. The jury will deliberate while the judge critiques the students. When the judge's critique is over, the jury will be asked for a final vote whether or not they have reached a verdict. The students will be given an opportunity to question the jury as to why they voted the way they did and what factors influenced them the most.

2. The decision rendered by the presiding judge is based on both the quality of the students' performance in the case, and on the best team presentation. The judges have been instructed to rate the performance of all witnesses and attorneys on the team. (See the Judge's Score Sheet.) In case of an arithmetic tie, the jury's

verdict will determine which team advances to the next round. If the jury verdict results in a tie a "Special Point" will be awarded by the judge as provided at the end of the performance Rating Sheet.

3. Judges will be instructed to discuss their decisions with the teams to enhance the learning experience.

4. Decisions of the judges are final.

III. TIME LIMITS

1. Due to the excessive length of some mock trials held in past years in other states, the following guidelines should be used in preparing your case for trial.

   Opening Statements . . . 10 minutes for each side
   Direct Examination . . . 7 minutes for each side
   Cross Examination. . . . 5 minutes for each witness
   Redirect Examination . . 2 minutes for each witness
   Closing Statements . . . 10 minutes for each side.

2. Every effort shall be made to respect these time limits. The judges will be asked to rate a team on its ability to adhere to these guidelines.

3. Time for bench conferences and extensive questioning from the judge will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

4. The court clerk or bailiff will act as timekeeper during the trial. This role may be played by one of the attorney-coaches or teachers if no neutral observer is available.

Principal Responsibilities of the Instructor and Attorney

1. Make certain that the case selected for the mock trial raises issues relevant to the objectives of the concepts being studies.

2. Assist with the coordination and support activities necessary to implement a mock trial, specifically:

   a. If desired, procure a sufficient number of attorneys and law students and a judge to serve as trial participants and/or resource persons.
   b. Make arrangements to use actual courtrooms, if desired.
   c. Invite non-class members to attend such as police officers, crime lab technicians or other experts to testify if available.
   d. Assign roles of those involved in the trial and determine how to make jury assignments.

3. Make certain that participants are familiar with mock trial procedures and their roles.

4. Assist participants in developing their roles or testimony when help is needed.

5. Oversee the conduct of the trial itself.

6. Conduct the debriefing session.

TRIAL PROCEDURES

STEPS IN MOCK TRIAL

The Opening of the Court

1. Either the clerk of the court or the judge will call the court to order.

2. When the judge enters, all participants should remain standing until the judge is seated.

3. The case will be announced, i.e., "The Court will not hear the case of _____ versus _____."

4. The judge will then ask the attorneys for each side if they are ready.

Opening Statements

Plaintiff

After introducing himself/herself and colleagues to the judge, the plaintiff's attorney summarizes the evidence which will be presented to prove the case.

Defendant

After introducing himself/herself and colleagues to the judge, the defendant's attorney in a criminal or civil case, summarizes for the Court the evidence which will be presented to rebut the case the prosecution has made.

Direct Examination by Plaintiff's Attorneys

The plaintiff's attorney conducts direct examination of each of its own witnesses. At this time, testimony and other evidence to prove the plaintiff's case will be presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case.

Note: The attorneys for both sides, on both direct and cross-examination, should remember that their only function is to ask questions; attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

Cross-examination by the Defendant's Attorneys

After the plaintiff's attorney has completed questioning each witness, the judge then allows the other party (i.e., defense attorney) to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out through cross-examination.

Direct Examination by the Defendant's Attorneys

Direct examination of each defense witness follows the same pattern as the above which describes the process for plaintiff's witnesses.

Cross-examination by the Plaintiff's Attorneys

Cross-examination of each defense witness follows the same pattern as the step above for cross-examination by the defense.

Closing Arguments

Plaintiff

A closing statement is a review of the evidence presented. It should indicate how the evidence has satisfied the elements of the claim, point out the law applicable to the case, and ask for a judgment for the plaintiff.

Defendant (in criminal or civil case)

The closing statement for the defense is essentially the same as for the plaintiff. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not satisfy the elements of the charge or claim, stresses the facts favorable to the defense and asks for a judgment for the defense.

The Judge's Role And Decision (Verdict)

The judge is the person who presides over the trial to ensure that the parties' rights are protected, and that the attorneys follow the rules of evidence and trial procedure. The jury has the function of determining the facts of the case and rendering a judgment. In trials held without a jury, the judge has the function of determining the facts of the case and rendering a judgment.

TIPS FOR PREPARING ROLES OF WITNESSES AND ATTORNEYS

This will outline various techniques and tips to be followed in preparing students to be witnesses and attorneys in mock trials. Included are suggestions for both the preparation before trial and the presentation at trial of the opening statement, direct examination, cross-examination, and the closing statement.

Opening Statements

Objective: To acquaint the jury with the case and outline what you are going to prove through witness testimony and the admission of evidence.

Advice in Preparing (for Attorneys):

What should be included?

1. A short summary of the facts

2. A clear and concise overview of the witnesses and physical evidence you will present and how each will contribute to proving your case

Other Suggestions:

1. Frequently attorneys introduce their colleagues by saying, "Your Honor, my name is _____. My colleagues are _____.

2. Learn your case thoroughly (facts, law, burdens of proof, etc.)

3. Don't ever promise to prove something you won't or aren't able to prove.

4. Write a clear, concise and well-organized statement.

Advice in Presenting (for Attorneys):

1. Know your case inside and out.

2. It is essential that you appear confident in your case.

3. Eye contact with the jury is recommended.

4. Use the future tense in describing what you will do (e.g., "the facts will show", "our witnesses' testimony will prove", etc.

5. Do not read the statement.

Direct Examination

Objective: To obtain information from favorable witnesses you call in order to prove the facts of your case.

Advice in Preparing (for Attorneys):

What should be included?

1. Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information.

2. Be sure all items you need to prove your case will be presented through your witnesses.

Other Suggestions:

1. Avoid asking leading questions. (There are of course a few generally accepted exceptions to this rule, i.e., questioning on matters such as name, address, occupation).

2. Practice with your witnesses.

3. Don't ask questions requiring opinion testimony, unless witness has been certified expert by the court.

Advice in Presenting (for Attorneys):

1. Try to keep to the questions you've practiced with your witnesses and ask a limited number.

2. Be able to think quickly if the witness gives you an unexpected answer and add a short follow-up to be sure you obtain the testimony you wanted.

3. Be relaxed and clear in the presentation of your questions.

4. Listen to the answers.

5. If you need a moment to think, ask the judge if you can discuss a point with your co-counsel for a moment.

6. Be sure to have all documents marked for identification before you refer to them at trial. Then refer to them as exhibit A, etc. After you have finished using it, if it at all helps your case, ask the judge to admit it as evidence.

Advice in Preparing (for Witnesses):

1. Learn the case inside out, especially your witness' deposition.

2. Know the questions that your side's attorney will ask and prepare clear and convincing answers that contain the information that the attorney is trying to elicit from your testimony.

3. Practice with the attorney.

Advice in Presenting (for Witnesses):

1. Be as relaxed and in control as possible, an appearance of confidence and trustworthiness is important.

2. Don't read or recite your witness' deposition verbatim.

3. Be sure that your testimony is never inconsistent with the facts set forth in your witness' deposition.

4. Don't panic if the attorney or judge asks you a question you haven't rehearsed.

Cross Examination

Objective: To make the other side's witnesses less believable in the eyes of the trier of fact.

Advice on Preparing (for Attorneys):

Types of Questions to Ask:

1. Questions that establish that the witness is lying on important points (e.g., the witness first testifies to not being at the scene of the accident and soon after admits to being there).

2. Questions that show that the witness is prejudiced or biased (e.g., the witness testifies that he has hated the defendant since childhood).

3. Questions that weaken the testimony of the witness by showing his opinion is questionable because of poor lighting (e.g., the witness with poor eyesight claims to have observed all the details of a fight that took place 500 feet away in a crowded bar)

4. Questions that show that an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience (e.g., a psychiatrist testifying to the defendant's need for dental work or a high school graduate testifying that in his opinion the defendant suffers from a chronic blood disease).

5. Questions that reflect on the witness' credibility by showing that he has given a contrary statement at another time. (E.g., the witness testifies to the exact opposite of what he testified to during his/her deposition.) This may be done by asking the witness "did you make this statement on June 1st?" and then read it or show a signed statement to the witness and ask "is this your deposition?" and then ask the witness to read part of it aloud or read it to the witness yourself and ask "did you say that?".

Other Suggestions:

1. Anticipate each witness' testimony and write your questions accordingly. Be ready to adapt your questions at trial depending on the actual testimony.

2. Try to ask leading questions (questions that suggest the answers and normally only require a yes or not answer).

3. Be brief. Don't ask so many questions that well-made points are lost.

4. Prepare short questions using easily understood language.

5. Ask only questions to which you already know the answer.

<u>Advice in Presenting (for Attorneys)</u>:

1. Be relaxed and ready to adapt your prepared questions to the testimony that is actually heard during the direct examination.

2. Always listen to the witness' answer.

3. Don't give the witness the opportunity to re-emphasize the strong points made during direct examination.

4. Don't quarrel with the witness.

5. Never try to allow the witness to explain anything. Keep to the yes or no answers whenever possible. Try to stop the witness if his answer or explanation is going on and hurting your case by

saying "You may stop there, thank you", or "That's enough, thank you".

Advice on Preparing (for Witnesses):

1. Learn the case thoroughly, especially your witness' deposition.

2. Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies, problems in your testimony and be prepared to explain them.

3. Practice.

Advice on Presenting (for Witnesses):

1. Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.

2. Be sure that your testimony is never inconsistent with the facts set forth in the witness' deposition.

3. Don't read or recite your witness' deposition word for word.

4. Cross-examination can be tough, so don't get flustered.

Closing Statements

Objective: To provide a clear and persuasive summary of: (1) the evidence you presented to prove the case and (2) the weaknesses of the other side's case.

Advice on Preparing:

What should be included:

1. Thank the judge or jury for its time and attention.

2. Isolate the issues and describe briefly how your presentation resolved these issues.

3. Review the testimony. Outline the strengths of your side's witnesses and also the weaknesses of the other side's witnesses. (Remember to adapt your statement at the end of the trial to reflect what the witnesses actually said as opposed to the anticipated weaknesses of the other side)

4. Review the physical evidence. Outline the strengths of your evidence and also outline the anticipated weakness of the other side's evidence. (This section too must be adapted at trial.)

5. Argue your case by stating how the law applies to the facts as you have proven them.

6. Don't forget to request the verdict/remedy you desire.

Other Suggestions:

1. Be sure your statement is well organized.

2. Rehearse as much as possible.

Advice on Presenting:

1. You must always be flexible. Adjust your statement to the weaknesses, contradictions, etc., in the other side's case that actually come out at trial. You can't anticipate everything perfectly before the actual presentation of the case.

2. Argue your side but don't appear to be vindictive. Fairness is important.

3. Be relaxed and ready for interruptions by certain judges that like to ask questions during closing statements.

4. Do not make objections during the other side's closing argument unless opposing counsel makes an outrageous mistake.

5. Do not read all the way through.

6. Keep eye contact with the jury or at least look up occasionally.

Some of the things most difficult for team members to learn are:

1. To decide which are the most important points to prove their side of the case and to make sure such proof takes place;

2. To tell clearly what they intend to prove in an opening statement and to argue effectively in their closing statement that the facts and evidence presented have proven their case;

3. To follow the formality of court, e.g., standing up when the judge enters; or when addressing the judge, to call the judge "Your Honor", etc.;

4. To phrase questions on direct examination that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions);

5. Not to ask so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions which often lessen the impact of points previously made. (Stop . . . recognize what questions are likely to require answers that will make good points for your side. Rely on the use of these questions. Avoid pointless questions!!!);

6. To think quickly on their feet when a witness gives an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at the attorney or witness. (Practice sessions will help prepare for this.)

General Suggestion For All Participants

1. Always be courteous to witnesses, other attorneys and the judge.

2. Always stand when the judge enters or leaves the room.

3. Dress appropriately (if it's a formal competition trial this may mean coat and tie for males and dresses or equivalent for females).

4. Always say "Yes, Your Honor" or "No, Your Honor" when answering a question from the judge.

5. Those acting as attorneys shouldn't make objections while the other side is asking questions unless you are relatively sure that the judge will agree with your objection (judges don't like attorneys that constantly make objections or attorneys that make objections without being able to explain the reason for the objections).

6. If the judge rules against you on a point or in the case, take the defeat gracefully and act cordially toward the judge and the other side.

SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this mock trial competition, the rules of evidence have been modified and simplified below.

Witness Examination

1. Direct examination (attorneys call and question Witnesses)

   a. Form of questions: Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests to the witness and answer desired by the examiner, and often suggests a "yes" or "no" answer. Direct questions generally are phrased to evoke a set of facts from the witness.

      Example of a direct question: "Mr. Smith, what is your nursing background?"

      Example of a leading question: "Mr. Smith, you have four years experience as a nurse, don't you?"

   b. Narration: While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. Narrative questions are objectionable.

      Examples of a narrative question: "Ms. Gray, what happened when Mr. Smith came to work at Lance?"

      Narrative answers: At times, a direct question may be appropriate, but the witness' answer may go beyond the facts for which the question asked. Such answers are subject to objection on the grounds of narration.

   c. Scope of witness examination: Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.

   d. Character: For mock trial purposes, evidence about the character of a party may not be introduced unless the person's character is an issue in the case.

   e. Refreshing Recollection: If a witness is unable to recall a statement made in the deposition, or if the witness contradicts the deposition, the attorney on direct may seek to introduce into

evidence that portion of the deposition that will help the witness to remember. (See Part B.5 on introduction of evidence).

2. Cross-examination (questioning of the other side's witnesses)

   a. Form of questions: An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided (these usually begin with "how", "why" or "explain").

      Example of a leading question: "Dr. Miller, isn't it true that you had reason to suspect that Nurse Dillon was treating Mr. Smith unfairly?"

   b. Scope of witness examination: Attorneys may only ask questions that relate to matters brought out by the other side on direct examination, or to matters relating to the credibility of the witness. This includes facts and statements made by the witness for the opposing party. Note that many judges allow a broad interpretation of this rule.

      Example: If the plaintiff in a car accident case never mentions damages to the car, then the defense cannot ask questions on cross-examination about the repair costs.

   c. Impeachment: On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that makes the witness' credibility (truth-telling ability) doubtful. Impeachment may also be done by introducing the witness' deposition, and asking the witness whether he or she has contradicted something which was stated in the deposition.

      Example (Prior Conduct): "Is it true that you beat your nephew when he was six years old and broke his arm?"

      (NOTE: These types of questions may only be asked when the questioning attorney has information that indicates that the conduct actually happened.)

3. Re-direct examination: If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination.

Additional Rules Of Evidence

1. Hearsay

Any evidence of a statement made by someone who is not present in the court which is offered to prove the truth of a fact, a piece of evidence or any witness' testimony is hearsay and not permitted.

Example: Witness Winters says, "Some of the other patients told me that Mr. Smith was clumsy and not very gentle with them."

Though hearsay is not usually allowed at a trial, a judge may sometimes allow it if:

a. It was said by a party in the case and contains evidence which goes against his side (e.g., in a murder case, the defendant told someone he committed the murder). This is sometimes called the "Admission against Interest" Exception; or

b. A person's state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person's state of mind (sometimes called "State of Mind" Exception).

2. Opinions of Witnesses: As a general rule, witnesses may not give opinions. Certain witnesses who have special knowledge or qualifications may be qualified as "experts". An expert must be qualified by the attorney for the party for which the expert is testifying; this means that before an expert can be asked an expert opinion, the questioning attorney must bring out the expert's qualifications and experience.

All witnesses may offer opinions based on the common experience of laypersons in the community and of which the witnesses have first-hand knowledge.

Examples: "I think Smith was clumsy." (allowed)
"I think Smith was not qualified to be a nurse." (not allowed unless made by nurse supervisor)

No witness may give an opinion about how the case should be decided. Example: "Ms. Gray, would you say that Vince Smith was made a vicitm of sex discrimination?" This is called the "ultimate issue" question.

3. Lack of Personal Knowledge: A witness may not testify to any matter of which the witness has no personal knowledge.

Example: If Nurse Gray never observed Mrs. Dillon speak to Mr. Smith, she could not say, "Mrs. Dillon always spoke to Vince in a rude and abrupt manner."

4. Relevance of Evidence: Generally, only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be with the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. This may include testimony, pieces of evidence

and demonstrations that have no direct bearing on the issues of the case, or have nothing to do with making the issues clearer.

Example: The defense asks, "Mr. Smith, how did you like working in the pediatrics unit?" This is irrelevant unless Smith's satisfaction with that assignment somehow relates.

5. Introduction of physical evidence There is special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case and the attorney must be prepared to defend its use on that basis. Below are the basic steps to use when introducing a physical object or document for identification and/or use as evidence.

   a. "Your honor, I ask that this personnel file be marked for identification as Plaintiff's Exhibit A." (Show document and hand it to the clerk for marking.)

   b. (Show personnel file to opposing counsel, who may make an objection to the offering at this time.)

   c. (Show personnel file to witness.) "Mr. Smith, do you recognize this document which is marked as Plaintiff's Exhibit A for identification?" (The witness should say yes and identify the document.)

      At this point, the attorney may proceed to ask the witness a series of questions about Exhibit A.

   d. If the attorney wishes to place the document into evidence, say, "Your honor, I offer this personnel file for admission into evidence as Plaintiff's exhibit A, and ask the court to so admit it."

   e. Get ruling from the court on admission and hand the document to the clerk.

Objections

An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a question or answer must be discarded, because it has violated a rule of evidence ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("Objection overruled").

Following are standard objections:

1. Irrelevant evidence: "I object, your honor. This testimony is irrelevant to the facts of this case."

2. Leading questions: "Object. Counsel is leading the witness." (Remember, this is only objectionable when done on direct examination).

3. Improper character testimony: "Objection. The witness' character or reputation has not been put in issue." or "Objection. Only the witness' reputation/character for truthfulness is at issue here."

4. Beyond the scope of direct examination: "Objection. Counsel is asking the witness about matters that did not come up in direct examination."

5. Hearsay: "Objection. Counsel's question/the witness' answer is based on hearsay." (If the witness makes a hearsay statement, the attorney should also say, "and I ask that the statement be stricken from the record.")

6. Opinion: "Objection. Counsel is asking the witness to give an opinion."

7. Lack of personal knowledge: "Objection. The witness has no personal knowledge that would enable him to answer this question."

Miscellaneous Rules Of Procedure

1. Re-direct examination is permissible; re-direct is limited to the scope of cross.

2. For mock trial purposes, motions for dismissal at the end of the plaintiffs' case are not to be used.

3 Order of closing arguments: first - defendant's; second - plaintiff's.

JUDGE'S SCORE SHEET

In deciding which team has made the best presentation in the case you are judging, we ask that you use the following criteria to evaluate each team's performance. As you know, scoring of the presentations should be independent of the legal decision in the case.

For each of the eleven performance standards listed below, we suggest that you rate each team on a scale of 1 to 5 as follows:

1 - Poor 2 - Fair 3 - Good 4 - Very Good 5 - Excellent

Plaintiff _____ (School name) Defendant _____ (School name)

		PLAINTIFF'S TEAM	DEFENDANT'S TEAM
OPENING STATEMENTS			
Plaintiff's First Witness	Direct Examination by Attorney		
	Cross Examination by Attorney		
	Witness' Performance		
Plaintiff's Second Witness	Direct Examination by Attorney		
	Cross Examination by Attorney		
	Witness' Performance		
Plaintiff's Third Witness	Direct Examination by Attorney		
	Cross Examination by Attorney		
	Witness' Performance		
Defendant's First Witness	Direct Examination by Attorney		
	Cross Examination by Attorney		
	Witness' Performance		
Defendant's Second Witness	Direct Examination by Attorney		
	Cross Examination by Attorney		
	Witness' Performance		
Defendant's Third Witness	Direct Examination by Attorney		
	Cross Examination by Attorney		
	Witness' Performance		
CLOSING STATEMENT			
TOTAL			
*SPECIAL POINT			
FINAL TOTAL			

*SPECIAL POINT - Overall impression of team's performance. (One point must be awarded to a team but it is not to be added to the team's TOTAL unless there is a tie resulting from the addition of the eleven performance standards shown on this rating sheet and the jury's verdict results in a tie.) If the TOTAL above is a tie and the jury verdict results in a tie, announce the award of the SPECIAL POINT and the FINAL TOTAL. Please feel free to make notes on the back.

Glossary

ADJUDICATION - a judicial decision.

APPELLATE - having the power to review the judgment of another court.

ARBITER - a person or agency with power to decide a dispute.

CAPITAL OFFENSE - any offense punishable by death.

CIVIL JURISDICTION - the right of a court to try civil cases. Civil cases are those matters in which two or more parties are using each other or in which other basically private matters are being decided.

COMPLAINANT - the party who makes the complaint in a legal action or proceeding.

CONSTITUTION - an established law or custom: ordinance. The mode in which a state or a society is organized. The fundamental principles of a nation, state, or body politic that determine the powers and duties of the government and guarantee certain rights to the people and that together constitute the organic law of the land. A written instrument embodying such rules.

COURT OF APPEALS & SUPREME COURT DISTRICTS - geographic and political units of the Court of Appeals and Supreme Court. While judges are elected from a district they serve throughout the state on the Court of Appeals. Supreme Court justices, while elected from a district, sit in Frankfort.

COURT OF LIMITED JURISDICTION - a court with the power to hear only certain types of cases. In District Court this jurisdiction is set by the General Assembly.

COURT OF ORIGINAL JURISDICTION - the court in which a given type of case must begin. From that court the case may be appealed to a higher court.

COURT OF GENERAL JURISDICTION - extends to all controversies that may be brought before a court within the legal bounds of rights and remedies, as apposed to special or limited jurisdiction which covers only a particular class of cases.

CRIMINAL JURISDICTION - the right of a court to try criminal cases. Criminal cases are those matters where the state places an individual or individuals or a corporation on trial for violation of a statute or regulation.

DISCRETIONARY REVIEW - a court has discretionary review powers when it may, on its own, decide whether or not to hear a given case. Under the Kentucky Constitution there is a right to one appeal to a higher court. Subsequent appeals are discretionary.

DOCKET - a document listing the order of business, or agenda, of a court listing the names of the cases before the court and setting the order and time for hearing of those cases.

EQUITY MATTERS - those cases in which persons are asking a court to order another person to do something or to refrain from doing something, or to grant some type of relief, such as a divorce, to the person other than money damages from the other person.

FELONY - any criminal offense for which the offender may be put to death or may be confined in the penitentiary.

JUDICIAL CIRCUIT - a geographic and administrative unit of the Circuit Court similar to that of the District Court.

MISDEMEANOR - anything other than a criminal offense. Misdemeanors are generally more minor in nature and carry fines or a combination of fine and imprisonment, usually in the county jail.

PROBATE OF A WILL - the process of proving that the will of a deceased person is genuine and, having done so, distributing his property or other assets according to the terms of the will.